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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

PETER H. POCKLINGTON,
LANTSON E. ELDRED,
TERRENCE J. WALTON,
YOLANDA C. VELAZQUEZ a/k/a
LANA VELAZQUEZ a/k/a LANA
PULEO, VANESSA PULEO,
ROBERT A. VANETTEN, NOVA
OCULUS PARTNERS, LLC, f/k/a
THE EYE MACHINE, LLC, and
AMC HOLDINGS, LLC,

Defendants.

EVA S. POCKLINGTON,
DTR HOLDINGS, LLC, COBRA
CHEMICAL, LLC, and GOLD STAR
RESOURCES, LLC,

Relief Defendants.

CASE NO. 5:18-cv-00701-JGB-SP

**NOTICE OF MOTION AND
MOTION TO DISMISS PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES**

District Judge: Hon. Jesus G. Bernal
Magistrate Judge: Hon. Sheri Pym

Complaint Filed: April 5, 2018
Trial Date: Not Set

Hearing Date: August 13, 2018
Hearing Time: 9:00 a.m.

1 **TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE THAT** on Monday, August 13 at 9:00 a.m., or as
4 soon as this motion may be heard in Courtroom 1, located at the George H. Brown Jr.
5 Federal Building and United States Courthouse, 3470 Twelfth Street, Riverside CA
6 92501-3801, by the Honorable Jesus G. Bernal, or any person sitting in his stead,
7 Defendant Lantson Eldred (“Eldred”) will move to dismiss the Complaint filed by
8 the Securities and Exchange Commission (the “SEC”) as to them, pursuant to Federal
9 Rule of Civil Procedure 12(b)(6).

10 This motion is based on this Notice and Motion and accompanying
11 Memorandum of Points of Authorities, and such additional matter as may properly be
12 brought before the Court at or before the hearing of this motion.

13
14 Dated: July 5, 2018

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

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17 By: /s/ Michael P. McCloskey
18 Michael P. McCloskey, Esq.
19 David J. Aveni, Esq.
Attorneys for Defendant
LANTSON E. ELDRED

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant Lantson E. Eldred (“Eldred”) hereby joins in, and incorporates by
3 reference, the motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), and
4 all other papers in support thereof, concurrently filed by defendants Peter
5 Pocklington, Terrence Walton, Robert Vanetten, Nova Oculus Partners, LLC f/k/a
6 The Eye Machine, LLC, AMC Holdings, LLC, and Relief Defendants Eva
7 Pocklington, DTR Holdings, Cobra Chemical, LLC, and Gold Star Resources, LLC.

8 In support of his motion to dismiss, Eldred further states as follows:

9 **I. DISCUSSION**

10 **A. Under The SEC’s Complaint, Eldred Could Not Be The “Maker”**
11 **Of Any Alleged Misrepresentation.**

12 The SEC’s claims against Eldred under Section 10(b) and Rule 10b-5(b) and
13 Section 17(a)(2) must be dismissed. Under the SEC’s own allegations in its
14 Complaint, Eldred could not be the “maker” of any of the alleged misrepresentations
15 or omissions.

16 As further detailed in the incorporated motion to dismiss filed concurrently by
17 The Eye Machine and other defendants, the Supreme Court has held that to state a
18 claim under Rule 10b-5, a plaintiff must adequately demonstrate that the defendant
19 was the “maker” of the alleged misstatement or omission. “For purposes of Rule
20 10b-5, the maker of a statement is the person or entity with ultimate authority over
21 the statement, including its content and whether and how to communicate it.” *Janus*
22 *Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135, 142 (2011). Merely
23 assisting in the preparation of a statement, even if the assistance was significant, does
24 not render that person a “maker” of that statement. *Id.* at 142, 147-48; *Reese v. BP*
25 *Exploration (Alaska) Inc.*, 643 F.3d 681, 693 n.8 (9th Cir. 2011).

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1 Here, the SEC's Complaint expressly and repeatedly alleges the individual
 2 with ultimate authority over The Eye Machine was Peter Pocklington, and that
 3 Lantson Eldred was nothing more than a "figurehead" who served as the "visual
 4 front" for the company. The Complaint alleges that while the Private Placement
 5 Memoranda stated Eldred was The Eye Machine's manager, those statements were
 6 misleading because it was Pocklington, *not Eldred*, who had actual authority and
 7 control over The Eye Machine. For example, the Complaint alleges:

- 8 ● "[T]o prevent investors from learning that he is in control of Eye
 9 Machine, [Pocklington] had his co-defendant, Lantson E. Eldred
 10 ("Eldred"), *serve as the 'visual front' of the company, while Pocklington*
 11 *controlled the company from behind the scenes.*" (Complaint ¶ 5
 12 (emphasis added).)
- 13 ● "The statements in the PPMs regarding Eldred's role as manager of Eye
 14 Machine were misleading *because Pocklington was the one who*
 15 *actually controlled Eye Machine.*" (Complaint ¶ 54 (emphasis added).)
- 16 ● "Contrary to what was disclosed to investors, *Pocklington had ultimate*
 17 *decision-making authority and control over Eye Machine . . .*"
 18 (Complaint ¶ 55 (emphasis added).)
- 19 ● "Pocklington himself acknowledged that he made the 'big picture
 20 decisions' for the company, and described *Eldred as the 'visual front' of*
 21 *the company who was nothing more than a 'figurehead.'*" (Complaint ¶
 22 57 (emphasis added).)

23 In short, the SEC's Complaint repeatedly alleges that Pocklington was the one
 24 who had complete and ultimate control over The Eye Machine, and that Eldred
 25 lacked such control. The SEC is the master of its own Complaint, so regardless of
 26 whether those fact allegations are true (which is not relevant on a motion to dismiss),
 27 the SEC is bound by them.

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1 The way the SEC has pled its Complaint, Eldred cannot be the “maker” of the
 2 alleged misstatements and omissions because the SEC alleges he was nothing more
 3 than a “figurehead” with no actual authority over The Eye Machine’s affairs,
 4 including its offering of securities. If Eldred did not have any actual authority and
 5 control over The Eye Machine, he could not be the one with ultimate authority over
 6 the statements made by The Eye Machine, including the alleged misrepresentations
 7 and omissions asserted in the Complaint. Consequently, under *Janus Capital*, 564
 8 U.S. at 142, the SEC’s claims against Eldred under Rule 10b-5 and Section 17(a)(2)
 9 must be dismissed.

10 **B. Aiding And Abetting Liability Is Defeated When The Primary** 11 **Violation Fails**

12 In its sixth claim for relief, the SEC alleges Eldred is liable for aiding and
 13 abetting violations of Section 17(a) of the Securities Act and Section 10(b) of the
 14 Securities and Exchange Act. To establish a claim for aiding and abetting liability
 15 under either act, the SEC must demonstrate (1) a primary violation, (2) substantial
 16 assistance in the primary violation, and (3) scienter. *See SEC v. Fehn*, 97 F.3d 1276,
 17 1289 (9th Cir. 1996).

18 As set forth above, the SEC fails to state a claim for primary violations of
 19 either Section 17(a) of the Securities Act or Section 10(b) of the Securities and
 20 Exchange Act. As a result, its claims for aiding in abetting those violations
 21 necessarily fail as well.

22 **II. CONCLUSION**

23 Eldred respectfully requests the SEC’s Complaint be dismissed for the reasons
 24 set forth in the motion to dismiss filed by defendants Peter Pocklington, Terrence
 25 Walton, Robert Vanetten, Nova Oculus Partners, LLC f/k/a The Eye Machine, LLC,
 26 AMC Holdings, LLC, and Relief Defendants Eva Pocklington, DTR Holdings, Cobra
 27 Chemical, LLC, and Gold Star Resources, LLC. Further, the SEC’s claims against
 28 Eldred under Section 10(b) and Rule 10b-5(b) and Section 17(a)(2) should be

1 dismissed because under the SEC's Complaint, Eldred could not be the "maker" of
2 the alleged misrepresentations. Finally, because the SEC fails to state a claim for
3 primary violations of Section 10(b) or Section 17(a), its claims for aiding and
4 abetting those violations fail as well.

5
6 Dated: July 5, 2018

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8
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